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THE FUEROS OF NORTHERN SPAIN.

THE meanings of the word *fuero* are so varied and have been so loosely defined that the casual reader is sure to be involved in the greatest embarrassment. In its narrower sense it designates any privilege or immunity granted to places more or less outside the regular judicial administration of the country. In its broader sense, however, it means law in general, or legal system. Thus the codified civil law, or law of the land, based on the *Corpus Juris*, but largely supplemented by provisions of the canon law, was called a *fuero*. Such were the monuments of Alfonso X. Distinct from these general codes, although sometimes embodied in them, were the special codes, called provincial and municipal *fueros*. Such were the *fueros* of Nájera and Sepúlveda. An example of the combination of general and local law is furnished by the *fuero* of Leon, which consisted of two parts: the first, a general code for the kingdom at large; the second, a municipal charter for the town. In the latter case it is plain that the word *fuero* is used in the sense of charter, or privilege. Such charters were numerous in the eleventh century, and still more so in the twelfth and thirteenth. They were granted by the kings of Spain to their various provinces and cities, and even to the villages and hamlets. Many of those of the North of Spain were borrowed from Valencia, Cuenca and other parts of the kingdom. It is, therefore, impossible to study intelligently those of the North without going, at least briefly, into the history and origin of *fueros* in general.

Close analysis distinguishes six different senses in which the word *fuero* (mediæval Latin: *forus*) has been used:

1. Derived from the Latin *forum*, the word meant originally the place of jurisdiction. The Roman magistrates of these provincial *fora* are said to have paid all possible deference to established usage. Hence the transfer of the word to the

latter sense. In his Code of the Seven Parts Alfonso X explains the genesis of customary law by saying: "From usage springs prescription (*tiempo*), and from prescription custom, and from custom fuero."

2. By an obvious extension of the latter meaning, the word came to be used for any body of law, as for example, the *Fuero Juzgo*. So del Molino declares: "Fori Aragonum dicuntur leges, quia legum dispositionem fororum vocabulum comprehendit." And again: "Fori Aragonum dicuntur statuta."

3. A specialization of meaning brought the application of the term to the civic rights conferred on particular cities, as the well-known fueros granted the Mozarabs, Castilians and Franks in Toledo. These were mere privileges or immunities. So far as they designate tenures of property they are nearly equivalent to the French *coutumes*, or "usages;" as *El Foro de Galicia* and *Les Fors et Coutumes de Béarn*. Under this head may be classed the *Cartas Pueblas*, describing all the numerous petty directions of a paternal government.

4. Many documents were called fueros which were merely records of gifts from landed proprietors to ecclesiastical or monastic institutions. These fueros of the privileged classes are embodied in the *Novísima Recopilación*. In this class come also the judge's legal opinions of the fuero, of the law of heredity and of penal offenses. Therefore, in one sense, a declaration or opinion of a magistrate was called a fuero.

5. The privileges of a great body of sheep and cattle owners (called the *Mesta*), etc.

6. The charters granted to practically autonomous states of Northern Spain and Southern France. In France these states were Labourd, La Soule and Béarn; in Spain, the so-called "exempt provinces" of the Basques and Navarre. It is the fueros of the Basques that have played the largest part in history as charters of liberty; and they, together with the fueros of Aragon, have the greatest interest for students.

The sources of the provisions found in general and local fueros (using the word in the second sense above indicated)

are to be sought in the Roman and Gothic codes and in ancient custom. Some were taken literally from the Isidorian collection of decrees and decretals, and from acts of the various councils of Toledo. It is impossible in the narrow limits of this paper to enter fully into the historical details of their growth. The salient points may be indicated thus : first, the early subjection of the cities to the barons, attributable to the feudal system, which however was far less important in Spain than in Italy or France, and had no effect whatever in the Basque provinces ; second, the general movement for liberty and independence which developed under the influence of the Crusades and which aimed at obtaining privileges and immunities from the kings ; third, the concession of the liberties sought for from various motives of royal policy — the increase of royal power and the restriction of that of the great lords, the stimulation of the growth of towns, the regulation of taxation, *etc.* Before taking up the municipal *fueros*, let us consider the general code on which they were so largely based.

The Fuero Juzgo.

This body of law dates probably from the seventh century. Alphonso de Villadiego assumed that it originated in the fourth council of Toledo, or at least under the Gothic kings. Up to the time of Receswinth, the Visigothic king who digested the code, Spain had used the Roman law as contained in the Breviary of Alaric. This latter was gradually superseded, however, by the *Fuero Juzgo*, which became the sole code. Its translation from Latin into Spanish was probably made under Alfonso X.

As to the general scope and character of the code, Guizot's account is most just :

All subjects of legislation are there met with. It is not a collection of ancient customs nor a first attempt at civil reform ; it is a universal code, a code of political, civil and criminal law, a code systematically digested with a view of providing for all the needs of society ; but it is also a system of philosophy — a doctrine. It is

preceded by, and here and there interspersed with, dissertations upon the origin of society, the nature of power, civil organization and the composition and publication of laws; and not only is it a system [of legal philosophy] but also a collection of moral exhortations, warnings and advice. The *Forum Judicum*, in a word, bears at once a legislative, a philosophical and a religious character. It partakes of the several properties of a law, a science and a sermon. The cause is simple: the law of the Visigoths is the work of the clergy. It emanated from the councils of Toledo. They were the national assemblies of the Spanish monarchy.

The code contains 592 sections, divided into twelve books.¹ The twelfth book, concerning the Jews, contains in germ the formulas of the inquisition. In general, however, the code was one of the mildest and most just of the middle ages. In respect to penalties for offences, it was distinguished from the Frankish codes by making all men equal before the law. The ordeals of fire and water were reserved for grave cases; torture, for capital offences only. The principal punishments were fines, the lash, banishment and servitude.

In respect to domestic relations, the influence of both the Roman law and Christian doctrine is clearly traceable. Marriage was encouraged in various ways, not only with a view to the increase of population in general, but with reference to fusion of the races. The matrimonial contract was conditional on the consent of the parents, and the bride's dower (furnished by the husband) was one-tenth of his estate. Divorce was obtainable only on Scriptural grounds.

From a linguistic standpoint the *Fuero Juzgo* was to the Spanish Language what Luther's Bible was to the German.

The Fueros of Leon and Castile.

Of the provincial charters the oldest that we have seems to be the fuero of Leon. Alfonso V granted this to the Cortes of Leon in 1020. It contains thirty sections, to which have been added the legal opinions of Alphonso VI by way of ap-

¹ Of the various editions, that of the Academy in 1815, in Latin and Spanish, is the best.

pendix. After the fuero of Leon came those of Nájera and Burgos respectively: the former in 1035, given by the King of Navarre, Sancho el Mayor, and confirmed by his son, King Garcias. The *Fuero Viejo* of Castile, granted by Count Sancho (995-1015), was published by Pedro of Castile, but the date of its formulation is uncertain, though about 992, according to Schmidt. Though now obsolete, its publication became necessary to define the prerogatives of the aristocracy.

Some charters were offered especially to foreigners, as the *Fueros Francos*. Of the capitulations granted the Moors and Jews, the oldest is that of Huesca (1089). These were common in the frontier towns and especially in places which had been recaptured from the Moors (*e.g.* Oloron in Béarn, 1080). Jaca's fuero dates from the Moorish expulsion, and was confirmed in 1063.

The most important of the municipal fueros of Leon and Castile is undoubtedly that which Alfonso VIII gave to the city of Cuenca.¹ Even in the time of Alfonso the Wise, this fuero was held in the highest honor by jurists, and its provisions, either entire or in part, are found verbatim in the fueros of Alcázar, Alarcón, Placencia, Baeza,² Consuegra and Sepúlveda.

The importance of these Spanish town charters can hardly be overestimated, from the standpoint of either social or political history. They throw the clearest light on the domestic life of the time, and they mark an important stage in the development of the national state. The communes of Spain were of greater antiquity than those of other countries of modern Europe, Italy perhaps excepted. Through the fueros the members of these communities gained all the security that law could give them for their persons, their honor and their property. No person duly enrolled on the list of citizens could be punished with loss of life or limb, or deprived of

¹ Cf. Schaefer, *Geschichte Spaniens*, vol. ii, p. 428.

² Marina has shown that the careless scribe very often forgot even to substitute Baeza for Cuenca in the transcription.

his property, except by sentence of a court of law in conformity to the fuero or charter of his town. If a king issued an order contrary to this privilege, anyone who executed the illegal mandate was liable to the *lex talionis*.

In addition to these municipal charters, it only remains to mention the great code of Alfonso the Wise, begun by his father, Ferdinand III, which from its seven parts was called *El Setenario*, or *Las Siete Partidas*.¹ This was a compilation drawn from the Pandects, the canon law, the *Fuero Juzgo* and other sources. It was finally adopted as statute law in Castile and Leon in 1348. Supplemented by the eighty-four *Leyes del Toro* of Ferdinand and Isabella, revised by Philip II, it has constituted the basis of Spanish jurisprudence to the present day.

The struggle between constitutional liberty and royal prerogative in Castile presents no such striking peculiarities as in Aragon and cannot be as accurately traced. From the ancient laws it appears that the monarch was elected by the clergy, nobility and people, but that his prerogative was extremely limited. The Cortes was almost coëval with the constitution, and it exerted pressure on the king by the familiar device of withholding money-grants till all business relative to the public welfare had been transacted.

The Castilian nobility, with its two grades, the *ricos hombres* and *hidalgos*, or *caballeros*, maintained a degree of freedom unknown even in contemporary England. The *ricos hombres* claimed the privilege of remaining covered in the royal presence and of approaching their sovereign as equals. The right of private war was fully secured to them. It was not till the time of Charles V that the royal policy effected finally the overthrow of the nobility and the suppression of the liberties of Castile.

¹ The titles of the seven divisions embody an acrostic of King Alfonso's name : A servicio de Dios ; La fe católica ; Fizo nuestro señor Dios ; Onras señaladas ; Nascen entre los homes ; Sesudamente dixéron ; Olvidanza et atrevimiento. This code, as well as the municipal fueros, received exhaustive scientific discussion in Marina, *Ensayo historico-critico sobre la Legislacion de Leon y Castilla*.

Aragon.

Aragon resisted longer the increasing power of the royal prerogative. With the exception of the *Hermandad*, a union of local authorities for police purposes, the division of her Cortes into four arms instead of three (the fourth estate alone being representative), and the *Justicia*, her institutions were very similar to those of Castile. They furnish us the earliest examples of representative government, and are, next to those of the Basques, the most interesting developed in Spain. "Law first, kings afterwards," being her proud device, the king was only first among equals. This appears in the formula employed at the coronation, when in presence of the Cortes the *Justicia* declared:

We, each of whom is singly as good as you, and who, united, are more powerful than you, make you our King on condition that you respect our fueros; if not, NO!

These words depend only on the authority of Antonio Perez, minister of Philip II, and their authenticity therefore is uncertain, but they are characteristic of the spirit of Aragonese institutions. Isabella declared openly that she wished to see the Aragonese revolt, so that she might take away their fueros. The most important embodiment of these fueros was the *Privilegio General* granted to the nobles and burghers by Don Pedro in 1283. This document is comparable with that wrested from King John at Runymede in 1215. The barons of Aragon, united for the defense of their fueros, compelled the grant of the charter at Saragossa. It was a confirmation of ancient privileges and, like *Magna Charta*, it included all classes alike. But, as Prescott says: "It differs from the *Magna Charta* wrested from King John by being conceded, however reluctantly, not by a pusillanimous prince, but by one of the ablest monarchs who ever sat on the throne of Aragon."¹ Hallam considers the *Privilegio General* even more satisfactory than *Magna Charta* as a basis of civil liberty. It was certainly as

¹ Ferdinand and Isabella, I, 74.

highly appreciated by the people of Aragon, and the subsequent evasions and confirmations of its provisions are entirely parallel to constitutional development in England during the thirteenth and succeeding centuries. In the struggle for the enforcement of the privileges already obtained, Alfonso III, in 1287, was induced to grant the extreme right of "union," which was merely an authorization of the nobles and towns to take arms against the king. This right of revolt, however, lasted only until 1348, when Pedro IV, having crushed a rising of the nobles at Epila, abrogated all charters authorizing "union."¹ Though Pedro's policy greatly increased the power of the crown, it was still limited by the authority of the *Justicia*. The office, according to Aragonese authorities, corresponded in some measure to the Ephori at Sparta, and to the *corregidor* of the Basques. The justiciar, endowed with powers both executive and judicial, was primarily guardian of the *fueros*, and he could interpose his authority against royal acts, even if not solicited. His person was sacred, and for the conduct of his office he was accountable to the Cortes only. The office was in existence for nearly five centuries,—from the twelfth to the seventeenth,—and becoming more and more important in its later days, was the object of the greatest jealousy on the part of the monarch. As the *ricos hombres*, or nobles of the first rank, were exempt from corporal punishment, the justiciar was chosen exclusively from the equestrian order, and he held by a life tenure. The exaggerated dignity of this officer is illustrated by the fact that in administering the oath of coronation he remained seated and covered, while the monarch kneeled bareheaded and swore to maintain the liberties of the people. The important functions of the office in protecting the subjects lasted till Philip II, who hanged the incumbent and made the office appointive.

¹It was at this time that occurred the famous incident in the assembly convoked by Pedro at Saragossa. Having cut the charter of "union" with his dagger, he wounded himself and allowed his own blood to efface the writing, declaring that "what had already cost so much blood should be redeemed by his own." In this way he won the surname "El del Puñal." Zurita, tome ii, p. 229.

The Basque Fueros.

The Basques are the most interesting of all the peoples of Spain. No contrast could be more marked than that between these active mountaineers and the haughty grandees of Castile and Andalusia. The love of freedom which proverbially finds its home among the mountains has characterized from the earliest time the men of the Basque provinces, and has manifested itself in the preservation of special political privileges almost to the present day. During all the turmoil that followed the Teutonic invasions, the Basques remained always free, if not completely independent; and while the rival Christian kingdoms of Castile and Navarre grew up around them, they still preserved their liberties. In the fourteenth century the lordship of Biscay, which included the territory of the Basques, became connected with the crown of Castile, but through a treaty by which the privileges of the people of the lordship were preserved.

The term "Basque provinces" designates the three divisions, Guipúzcoa, Vizcaya (Biscay) and Álava.¹ On account of their peculiar privileges they have also been known as the "exempt provinces." Their fueros may be traced to two sources: (1) the *Fueros Generales* and *Fueros de Albedrío*, which had their birth in the necessities of pastoral life; (2) laws copied from the ancient Latin municipalities.

The fueros of Vizcaya are the most democratic in character. They grew up in the contests of the inhabitants with their counts, and were probably first collected into a code by Count Juan in 1371. After the final union of Biscay with Castile they were recast (1526), completed and confirmed by the Emperor Charles V.

This final connection of the Basque land with Castile was effected in 1379 on the principle of personal union. The King of Castile became Lord of Vizcaya, and it was by this latter title

¹ The French Pays Basque, including Labourd, Basse Navarre, la Soule and the Vallée d' Aspe, has essentially the same characteristics as those here described.

that the Basques continued to know the Spanish king to the present century. In assuming the lordship of Viscaya, Don Juan, the Castilian king who first united the dominions, swore at Guernica that he and his successors would maintain the "fueros, customs, franchises and liberties" of the land. The obligation to take this oath in person at the same place long remained binding on the Spanish sovereigns, at least in theory ; but in practice the journey, though announced, was invariably postponed to *mañana*, the morrow that never comes.

From the time of the union royal policy was steadily directed toward the establishment of more real authority over the Basques, but the latter clung desperately, and for the most part successfully, to the original principle. A leading article of the Basque fueros exempted the people from taxes not voted by themselves. Henry IV, the successor of Don Juan, sought to violate this principle, but the bearer of his demands was slain by the Guipúzcoans. An attempt of the same king to bestow Basque lands on court favorites was followed by his formal deposition from the lordship of Biscay and the acknowledgment of his sister, Isabella of Castile, in 1473. The oath taken by Isabella is interesting both for its local coloring and for its constitutional importance :

I, as Princess and Lady of the said towns, lowlands and lordship of Biscay, with all places adjoining and adhering to the same, bind myself once, twice, thrice ; once, twice and thrice ; once, twice and thrice ; according to the fuero and custom of Spain, on the hands of Gomez Manriquez, knight, man and noble, who receives this my homage ; and I swear to our Lord God, to the holy Virgin Mary and on the sign of the cross, which corporally I touch with my right hand, and on the words of the Holy Gospels, in whatsoever place they may be, to maintain firm, good, valid and binding now and for all time to come, the said privilege, general and special, fueros, usages and customs, franchises and liberties of the said towns and lowlands of the said country and lordship of Biscay and of all the places adjoining and adhering to the same.¹

Isabella respected the Biscayan fueros ; but when the absolute monarchy had been thoroughly established in Spain, an

¹ *Cuerpo del Fuero de Vizcaya*, fol. 282.

attempt was made by Philip III, in 1601, to levy duties by royal ordinance. The resistance of the deputies raised so threatening a storm that the king was glad to withdraw the ordinance.¹ A more recent affair of the same character is suggestive of incidents in American history. Under Godoy, in 1804, a stamp tax was imposed on the Basques to aid the general revenue. But the deputies, having declared the law an infringement of their liberties, ordered the stamps burned by the common hangman under the tree of Guernica.² And finally, the devotion of the Basques to the Carlist cause, which has been so conspicuous during this century, is due in a great measure to gratitude for the opposition raised by the first Don Carlos, in the council of state, to the projects of Ferdinand VII, which involved infringement of the Biscayan fueros.

The organization under which the practically autonomous government of the Basque provinces was carried on was thoroughly pervaded with primitive democracy. The leading features of this organization in Vizcaya, where it was most complex, were as follows. At the foundation of the system were two assemblies, the one ordinary, called the *junta general*, the other extraordinary, known as the *merindad*. The *junta general* consisted of deputies from the towns, villages and hamlets of the lordship, together with the *corregidor* and three lieutenant *corregidores* appointed by the crown, but with no vote in the assembly, and six *regidores* (minor magistrates) and two popular tribunes appointed by the assembly.

The royal *corregidor* had to be a native Basque, and his functions were strictly those of intermediary between the local and the central authority. The supreme power was invested in the *junta general*, by which the *regimiento*, or magistracy, was appointed. The deputies assembled every two years, on even years, under the oak of Guernica, near the village of that name. Here, in the presence of the *regimiento*, sitting on stone seats, the 108 *procuradores* stood with uncovered heads and took the oath to maintain the fueros and respect the rights of their lord. The *procuradores* then proceeded to the

¹ Recopilacion, fol. 301.

² Herbert, Basque Provinces, p. 262.

adjoining chapel, reviewed the list of the deputies, or "good men," as they were called, and opened the session. Priests and lawyers were ineligible as deputies. One lawyer (*letrado*) was summoned in the quality of *asesor*, but without the right to vote. "He was considered a consulting authority," says Webster, "and no other member of the profession was allowed to even enter the town where the *junta* was held, during the sessions." The sessions were open and free to everybody, not secret as in Guipúzcoa.¹ The debates were indiscriminately in Basque and Spanish, but were published only in Spanish.

The regular sessions of the *regimiento* (composed of eighteen members) took place twice a year.

The executive of the province was called the *deputacion de gobierno*. It controlled the acts of the *corregidor* sent to Madrid and all the administrative, military and judicial measures. It superintended the collection of taxes laid by the *junta* of Guernica. It decided as to the proofs of nobility and domicile and exercised a general supervision over such acts of the *corregidor* as touched the *fueros*.

Omitting minor points, the essential features of the Basque privileges may be summarized as follows :

1. Freedom of pasturage, passage and commerce in all the territory belonging to the general community.

2. Complete personal independence for every individual. This principle was carried even into civil process. The person of the debtor was inviolable, as well as his house and his horses.

3. The right of self-defense against everyone, — the lord or seigneur, laic or ecclesiastic, pope or emperor. The killing of the royal messenger, mentioned above, was regarded as a proper exercise of this right, and the three provinces joined in protecting the slayer as defender of the *fueros*.

4. Exemption from the obligation to do military service, except (1) in time of war, (2) in their own province and (3) at the

¹ Mr. J. Wentworth Webster is a most valuable authority on this subject, but there appears to be a discrepancy in his statements of 1882 and 1888 respectively, as to the sessions being open. The fact seems to be that the practice varied, and that in Vizcaya the sittings were open, whereas in Guipúzcoa and Alava they were held "*a huis clos*."

command of the *junta*. This service would correspond to the German *Landsturm*, which can only be called out in time of invasion. The *junta* of Guipúzcoa required every one between sixteen and sixty years of age, and capable of bearing arms, to have firearms and to be ready for mobilization. Recruits could not be led beyond "*el árbol malato plantado en Luyando*" in Vizcaya, without the consent of the *junta*, and even with that consent they received pay for three months in advance or a sufficient guarantee to secure it.

5. The absolute exclusion of royal troops from the country except in case of a few towns. This exception is rarely mentioned.

6. The Basque contingents of the royal army always to have Basque officers. Gonsalvo de Córdoba, after some experience in the matter, said that he would rather command wild lions than Basques.

7. Exemption from every royal tax or impost. The money voted by the *juntas* to the King of Spain was a free gift (*donativo*), never a tribute. This gift was voted only in extraordinary cases, and only when all the other questions of the government had been settled. The only exception to the rule — the only tax levied (and that only in Guipúzcoa) — was the *alcabala*, upon the importation of foreign wines and the sale of iron in the province. This, however, hardly brought in 42,000 reals. The sale of salt and tobacco was free, and there was no tax on timber or contracts or inheritance.

8. Entire freedom of commerce, both internal and external. The Ebro, on the south, was the only line of any restriction, and this line was subject to all sorts of special arrangements. The right of free commerce was always a source of especial contention between the Basques and the royal authority, and it was only by the utmost vigilance that it was preserved against the jealousy of the kings and of the other provinces.

9. The enjoyment of the rank and privileges of *hidalgos*. All who could prove Basque parentage for two generations claimed to be "noble." The logic was this: The Basque was a freeman in law and fact; but the only man thus free was the

noble: therefore the Basque was noble. (As decapitation was reserved for nobles exclusively, an old Spanish writer says that in more than one case nobility was established simply by evidence that an ancestor had been decapitated.) This so-called nobility meant little more than exemption from servitude and taxation, but it furnishes an element in the pride of the peasant and the poorer classes.¹

On the side of private law there was a marked distinction between the system of the towns and that of the country region (*terra llana*). The towns were regarded as pertaining in a certain sense to the crown, and accordingly the principles of the Castilian code were recognized. In the country the Basque fueros were maintained in their purity. As an example of the difference may be cited the rule as to testamentary disposition of property. In the towns the father's right of bequest was limited to a third or a fifth of the property; in the country he might leave his estate to a single child, provided he secured to each of the other children "one of the highest trees, a tile and ten pence in money." Again, under the *fuero de perdón de los parientes del muerto* a murderer was exempt from prosecution in the *terra llana* if forgiven by the relatives of the victim.

A curious feature in the field of family relations was the custom of concubinage. This was a legitimate practice for both laymen and clergy and was based on considerations of "the public good and gain in population." In the fueros of Vizcaya occurred the following passage :

Inasmuch as the clergy, being obliged to lead a life of celibacy, are continually committing divers immoralities *etc.*, and endangering the peace of families, — now, in order that they (the *curas*) shall have no excuse for corrupting our wives and daughters in future, they shall be allowed to maintain one or two concubines (*barraganas*) in their houses.²

¹ Compare the meeting of Don Quixote with the Biscayan. "What, me no gentleman!" cried the wrathful peasant, "I swear thou be a liar, as me be Christian. If thou throw away lance and draw sword, me will make no more of thee than cat does of mouse. Me will show thee me be Biscayan and gentleman by land, gentleman by sea, gentleman in spite of devil; and thou lie if thou say contrary."

² Cf. Marina, Ensayo, art. 207.

The relations arising from the practice of concubinage were minutely determined by the laws. No reproach or loss of privilege attached to the offspring. The children of a *barra-gana* preceded collateral heirs in the succession to the father's estate, and in the absence of any specific provision for them they could even share the inheritance with the children of the wife.¹

An attempt in the thirteenth century to crush out the practice, especially among the clergy, met with little success; and when, in the time of Don Pedro (1351), it was in a measure done away with, prostitution took its place.

The governmental organization and *fueros* of Vizcaya were substantially those of all the provinces of the Spanish Basques. The differences are of slight importance. For example, while the general *junta* of Biscay met once in every two years, as stated, that of Guipúzcoa met every year, and that of Álava three times a year. If the *corregidor* of Guipúzcoa was absent, the presidency of the *junta* belonged to the *alcalde* of the city or borough where it is assembled. The *Hermandad* of Guipúzcoa was a republican federation composed of about one hundred cities, all having the right to become the seat of the general *junta*. This *junta* was composed of sixty-six civil officers, called *procuradores*, or commissioners, also under the presidency of a *corregidor*. In Álava the constitution was nearly the same. A peculiar feature here was the right enjoyed by the wives of the *hidalgos* of voting in the *junta*.

In the details of political and social life, in short, the *fueros* of the Basques varied from valley to valley and village to village as greatly as does the language, of which there are twenty-three varieties and eight dialects. Institutions and language agree in marking these mountaineers as a peculiar people.²

¹ Cf. Fraser, vol. xxii, p. 50.

² The Basque language has been a stumbling block to the philologists, and its peculiarities, from the standpoint of its neighbors, have been the subject of many gibes. Some one has described it as "written Solomon and pronounced Nebuchadnezzar"; and there is a saying that the devil studied it seven years and only learned three words. The use of *v* and *b* interchangeably is the basis of Scaliger's famous *mot*: "Happy the people to whom *vivere est bibere*."

In resisting the constitutional liberalism of the present century the Basques lost their *fueros*. When the constitution of 1812 was put in operation they perceived that under this system their special privileges would be threatened, and it did not require the formal abolition of their *fueros* by the Castaños government, in 1833, to throw the mountaineers into a passionate support of Don Carlos. Failing to comprehend the general liberty which constitutionalism involved, they saw in the Liberals only the assailants of their ancient rights. The Conservatives and Clericals represented the old order in church and state, and Don Carlos stood for legitimacy and divine right. Though in the heat of war this sovereign whom they recognized showed small respect for their precious *fueros*, they trusted that he, like all his absolute predecessors, would in peace restore them as before. In the war that lasted from 1833 to 1839, the Basques fought as freedom-loving mountaineers have always fought, but victory was not for them. By the treaty of Vergara, however, though they recognized Isabella, they retained their *fueros*. The second Carlist War, 1872-76, had a different outcome. After the suppression of the insurrection, at the accession of Alfonso XII, the abolition of the *fueros* was decreed by the Cortes, and, after a noisy opposition, was put into execution. The three provinces, Vizcaya, Guipúzcoa, and Álava were required to furnish annually 2,050 conscripts to the Spanish army and to pay their share of the national taxes ; but they, as well as Navarre, were given a delay of ten years. At the end of this period, *i.e.* in 1886, they negotiated with Sr. Sagasta for a new delay of one year, and in the course of that winter Queen Christina made it indefinite in time. This was only a bit of state policy, to soothe the Carlists, and its effect was evident when, in 1887, even the most devoted adherents to the cause of the pretender joined in a cordial reception to the queen on her visit to their country. A compromise with the central government, by which \$300,000 is paid as an equivalent of all taxation, has left these mountaineers a measure of independence in civil and municipal administration. But the autonomous institutions for

which they fought and bled are gone. Formerly they were a republic *de facto*, and they themselves used the name *republica*, — as did, in 1693, the inhabitants of the Vallée d'Aspe and as Andorra does still.

Though it has been claimed that the Basques, in supporting Don Carlos, were fighting for civil and religious liberty, there is room for the suspicion that they fought more for a privilege than for a principle. They had immunities not shared by the other provinces of the kingdom; and such a situation was inconsistent with the spirit of the times. It seems, therefore, as if one large element in their action was pure selfishness. As one has expressed it, they possibly fought more for immunity from just taxation than for constitutional liberty. Yet even if this were true, it was a late manifestation, — not the actuating principle in the earlier history of the people. But whatever view is taken on this question, an allowance must be made, even in its later phase, for the ignorance and superstition of the Basques. Only with such allowance can the strange contradiction be understood of "Republicans fighting for divine right." In the Carlist wars the Basques stood out against the ideas of national unity; they therefore became an obstacle to progress. Their very *fueros* had outlived their usefulness and had become an instrument of tyranny. It was best that they should perish.

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